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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,198	06/22/2000	Theodore G. Habing	068757.P063C	8408

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT PAPER NUMBER

3764

DATE MAILED: 01/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/602,198

Applicant(s)

HABING ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on October 12, 2001 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,080,091 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Specification

2. The disclosure is objected to because of the following informalities: in the newly added paragraph to page 1, line 3, under heading 1, the term "1989" on line 2 presumably should be replaced with --1999--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 9 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "the respective secondary pivot axis" on line 2 of each claim lacks antecedent basis. Presumably, each secondary pivot has a pivot axis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2-14 are rejected under 35 U.S.C. 102(b) as being anticipated by *Habing* (US Pat. 5,417,633). *Habing* '633 discloses an exercise apparatus comprising a frame 30; a press arm 130' pivotally coupled to the frame, the press arm having a main arm member 130' depending from a main pivot 132 on the frame and a pair of secondary arms 158 coupled to the main arm member at respective secondary pivots 154, wherein each secondary arm pivots both inwardly and outwardly from a pendulous, at rest position about a respective secondary pivot, to permit a continuously variable hand grip orientation (col. 5, lines 10-12). The secondary arms 158 extend at an oblique angle with respect to the respective secondary pivot axis. Weights 90 provide a source of exercise resistance and are coupled to the main press arm by a cable 82 and at least one pulley 134,136 rotatably mounted on the main arm member. The main arm member includes a transverse cross member 130'. The main pivot and secondary pivots have respective pivot axes, wherein the pivot axes of the secondary pivots are parallel to each other and orthogonal to the main pivot axis. The secondary pivots are also inclined with respect to vertical.

6. Claims 2-8 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by *Deola* (US Pat. D359,326). *Deola* '326 discloses an exercise apparatus (see Figs. 2 and 7)

comprising a frame; a press arm pivotally coupled to the frame, the press arm having a main arm depending from a main pivot and a pair of secondary arms coupled to the main arm at respective secondary pivots. Each secondary arm pivots inwardly and outwardly from a pendulous, at rest position about a respective secondary pivot. Weights provide a source of exercise resistance and are coupled to the press arm by a cable reeved through at least one pulley mounted to the main arm (see Fig. 2). The main arm member includes a transverse cross member.

With regard to claims 8 and 11-13, the drawings do not explicitly show the secondary pivots orthogonal with respect to the main pivot and inclined with respect to vertical, but such limitation is inherent in the exercise apparatus shown.

The drawings show exercise apparatus with the secondary arms lying in a generally horizontal plane, wherein the secondary pivots are orthogonal with respect to the main pivot, but not inclined with respect to vertical. The exercise apparatus has tertiary pivots (see Fig. 7) that permit the secondary arms to pivot about axes orthogonal to the secondary pivot axes. The transverse cross member is also angularly adjustable relative to the main arm member via a pivot connection and a pin/aperture locking mechanism. The tertiary pivots and the angular adjustability of the cross member relative to the main arm permits the secondary pivots to be inclined with respect to vertical and be orthogonal with respect to the main pivot.

The secondary arms may be positioned with the transverse cross member adjusted to occupy a generally vertical plane such that the secondary arms depend from the ends of the transverse cross member and reside in a generally vertical orientation. Such a position would

have the secondary pivots inclined with respect to vertical and orthogonal with respect to the main pivot.

7. Claims 2, 3, 6, 7, 9 rejected under 35 U.S.C. 102(b) as being anticipated by *Jones* (US Pat. 5,304,107). *Jones* discloses an exercise apparatus comprising a frame 44; a press arm 40 pivotally coupled to the frame, the press arm having a main arm member 47 depending from a main pivot 42 on the frame and a pair of secondary arms 48 coupled to the main arm member at respective secondary pivots (see Fig. 2), wherein each secondary arm pivots both inwardly and outwardly from a pendulous, at rest position about a respective secondary pivot. Weights 51 provide a source of exercise resistance and are coupled to the main arm. The secondary pivots are disposed at opposite ends of a transverse cross member 45,46. Each of the secondary arms 48 extend at an oblique angle with respect to the respective secondary pivot.

Response to Arguments

8. Applicant's arguments filed October 12, 2001 have been fully considered but they are not persuasive. Applicant's arguments with respect to claims rejected by *Hecox* have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's arguments that *Habing*'633 does not teach a press arm with a main arm member and a pair of secondary arm members coupled to the main arm member at respective secondary pivots, wherein each of the secondary arms pivots both inwardly and outwardly from a pendulous rest position about a respective one of the secondary pivots because *Habing*'633 teaches a hand grip coupled to the main arm member and because the

hand grips pivot up and down as opposed to in and out, the Examiner disagrees. The hand grip 160 is secured to angle bracket 158 (i.e., secondary arm), which in turn is secured to shaft 154 (i.e., secondary pivot). The angle bracket 158 pivots about the axis of shaft 154, which is orthogonal to the axis of the main pivot 132 and is inclined with respect to vertical. The Examiner fails to see the difference between an "up/down" pivoting action of the hand grips and the broad limitation of "inwardly and outwardly" pivoting as claimed. An "up/down" pivoting is encompassed by a limitation of inward and outward pivoting. The secondary arm 158 is pivotal inwardly towards a center of the exercise apparatus and is pivotal outwardly away from a center of the exercise apparatus. The secondary arm 158 has a pendulous, at rest position that permits both inward and outward pivoting.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Deola (US Pat. 4,949,951), *Fulks* (US Pat. 5,549,530) and *LaPlaca* (US Pat. 6,270,447 B1) disclose exercise apparatus comprising press arms pivotal about a main pivot and secondary arms coupled to the main arm at respective secondary pivots, wherein each secondary arm pivots both inwardly and outwardly from a pendulous, at rest position about a respective one of the secondary pivots.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 6:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit 3764 Patent Analyst whose telephone number is (703) 305-1708.



Victor K. Hwang
January 11, 2002



JEANETTE CHAPMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.